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11 Attorneys for Defendants,
TRACY AVILDSSEN AND STATE FARM MUTUAL AUTOMOBILE
12 INSURANCE COMPANY, INC.

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 JOHN BROSNAN,

18 Plaintiff,
19

20 vs.

21
22 TRACY AVILDSSEN aka TRACY
23 BROOKS SWOPE, STATE FARM
24 MUTUAL AUTOMOBILE INSURANCE
COMPANY, INCORPORATED, and
DOES 1 - 233,
25
26
27
28

Defendants.

Case No. CV 07-6438 EDL

**DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE;
EXHIBITS**

*(Motion to Dismiss and
[Proposed] Order Filed
Concurrently)*

Date: May 27, 2008
Time: 9:00 a.m.
Ctmm: E

1 Defendants TRACY AVILDSSEN AND STATE FARM MUTUAL
2 AUTOMOBILE INSURANCE COMPANY, INC. hereby request the Court to take
3 judicial notice, pursuant to Federal Rules of Evidence, Rule 201 of the following
4 facts:

5 1. On February 16, 2007, plaintiff John Brosnan filed a Complaint in
6 Brosnan dba Apex ISP Services v. Munger, et al., Case No. C 07-0996 SI, wherein
7 he alleged that he was a "California business located in Pleasant Hill, California . . ."
8 (Ex. A).

9 2. In Brosnan dba Apex ISP Services v. Munger, et al., Case No. C 07-
10 0996 SI, plaintiff's email address is listed as john@cityofsanfrancisco.com (Ex. B).

11 2. On December 3, 2007, plaintiff John Brosnan filed a First Amended
12 Complaint in Brosnan v. Oberle, et al., Case No. C 07-4337, wherein he listed his
13 address as 3321 Vincent Road, Pleasant Hill, California. (Ex. C).

14 3. In In re John Brosnan, Case No. 06-42475, plaintiff filed a Chapter 13
15 Bankruptcy Petition, stating, under penalty of perjury, that his mailing address was in
16 Pleasant Hill, California; that he resided in Los Angeles County; and that he had
17 previously filed bankruptcy petitions in California in 1999 and 2000. (Ex. D).

18
19
20 Dated: April 14, 2008

MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP

21
22 By: S:\Patrick L. Hurley

23 Attorneys for Defendants,
24 TRACY AVILDSSEN AND STATE
25 FARM MUTUAL AUTOMOBILE
26 INSURANCE COMPANY, INC.
27
28

EXHIBIT A

1 John Brosnan
3321 Vincent Road
2 Pleasant Hill, California 94523
Telephone: 925.930.3486
3 Facsimile: 650.745.2723

FILED

07 FEB 16 PM 2:06

RICHARD W. WELKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA

SI

8 JOHN BROSINAN DBA APEX ISP SERVICES
Plaintiff

Case No. **07 0996**

COMPLAINT FOR DAMAGES AND INJUNCTIVE
RELIEF - VIOLATION OF 2003 CAN-SPAM ACT
[15 U.S.C. §7701, *et seq.*]

10 Vs.

11 CHRISTOPHER J. MUNGER, CASH FLOW
INC, JESUS CHAVEZ
12 And
DOES 1-100

DEMAND FOR JURY TRIAL

17 JOHN BROSINAN alleges as follows:

18 JURISDICTION, VENUE, AND PARTIES

19 1. This Court has original jurisdiction of the causes of action herein which are brought under the
20 CAN-SPAM Act of 2003 - 15 U.S.C. §7701, *et seq.*, 15 U.S.C. §7707(g)(1).

21 2. The unlawful actions of the defendants were committed in the State of California and in the
22 judicial district of this Court.

23 3. Plaintiff is a California business located in Pleasant Hill, California, and provides Internet access
24 service within the meaning of 15 U.S.C. §7703(11).

25 4. Plaintiff is informed and believes that Christopher J. Munger is a California resident.

EXHIBIT B

ADRMOP, E-Filing

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:07-cv-00996-SI**

Brosnan v. Munger et al
Assigned to: Hon. Susan Illston
Cause: 28:1331 Fed. Question: Personal Injury

Date Filed: 02/16/2007
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Federal Question

Plaintiff

John Brosnan
doing business as
Apex Isp Services

represented by **John Brosnan**
ProSe
3321 Vincent Road
Pleasant Hill, CA 94523
510-779-1006
Email: john@cityofsanfrancisco.com
ATTORNEY TO BE NOTICED

V.

Defendant

Christopher J. Munger

Defendant

Cash Flow Inc.

Defendant

Jesus Chavez

Date Filed	#	Docket Text
02/16/2007	<u>1</u>	COMPLAINT (Summons issued); against Christopher J. Munger, Cash Flow Inc., Jesus Chavez (Filing fee \$ 350, receipt number 34611003081.). Filed by John Brosnan. (ys, COURT STAFF) (Filed on 2/16/2007) Additional attachment(s) added on 10/25/2007 (ys, COURT STAFF). (Entered: 02/16/2007)
02/16/2007	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 5/18/2007. Case Management Conference set for 5/25/2007 02:00 PM. (Attachments: # <u>1</u> cmc order# <u>2</u> standing order)(ys, COURT STAFF) (Filed on 2/16/2007) (Entered: 02/16/2007)
02/16/2007		Summons Issued as to Christopher J. Munger, Cash Flow Inc., Jesus

EXHIBIT C

1 John Brosnan
3321 Vincent Road
2 Pleasant Hill, California 94523
Telephone: 510.779.1006
3 Facsimile: 925.237.8300
4
5

6 UNITED STATES DISTRICT COURT
7
8 NORTHERN DISTRICT OF CALIFORNIA

8 JOHN BROSINAN

9 Plaintiff

10 Vs.

11 DON OBERLE, TIMOTHY JON CARRE,
12 JAMES G. SCHWARTZ, JOSHUA D. BRYSK,
13 INNOVATIVE MORTGAGE SOLUTIONS,
MERIDIAN CAPITAL INC.
14 And DOES 1-100
15
16

Case No.

FIRST AMENDED COMPLAINT
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF
VIOLATION OF 18 U.S.C. § 1621 – PERJURY,
VIOLATION OF 18 U.S.C. § 241 CONSPIRACY
TO COMMIT PERJURY

DEMAND FOR JURY TRIAL

Date : -
Time : -
Place : -
Trial Date : None Set

17
18 JOHN BROSINAN alleges as follows:

19 JURISDICTION, VENUE, AND PARTIES

20 1. This Court has original jurisdiction of the causes of action herein which are brought under 18
21 U.S.C. § 241 and 18 U.S.C. § 1621.

22 2. The unlawful actions of the defendants were committed in the State of California and in the
23 judicial district of this Court.

24 3. Plaintiff is a Nevada resident.

25 4. Plaintiff is informed and believes that Don Oberle (“OBERLE”) is a California resident.

26 5. Plaintiff is informed and believes that Tim Carre (“CARRE”) is a California resident.

27 6. Plaintiff is informed and believes that Joshua D. Brysk (“BRYSK”) is a California resident.

28 7. Plaintiff is informed and believes that James G. Schwartz “SCHWARTZ”. is a California

COMPLAINT

EXHIBIT D

Official Form 1 (10/06)

United States Bankruptcy Court Northern DISTRICT OF California																								
Name of Debtor (if individual, enter Last, First, Middle): John Brosnan		Name of Joint Debtor (Spouse) (Last, First, Middle):																						
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):																						
Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all): 8314		Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):																						
Street Address of Debtor (No. and Street, City, and State): 3321 Vincent Road Pleasant Hill, CA 94523 <div style="text-align: right;">ZIP CODE</div>		Street Address of Joint Debtor (No. and Street, City, and State): <div style="text-align: right;">ZIP CODE</div>																						
County of Residence or of the Principal Place of Business: Los Angeles		County of Residence or of the Principal Place of Business:																						
Mailing Address of Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>		Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right;">ZIP CODE</div>																						
Location of Principal Assets of Business Debtor (if different from street address above): Los Angeles <div style="text-align: right;">ZIP CODE</div>		<div style="text-align: right;">ZIP CODE</div>																						
Type of Debtor (Form of Organization) (Check one box.) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other Tax-Exempt Entity (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input checked="" type="checkbox"/> Chapter 13 </div> <div> <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding </div> </div> <hr/> Nature of Debts (Check one box.) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.																						
Filing Fee (Check one box.) <input type="checkbox"/> Full Filing Fee attached. <input checked="" type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2 million. Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).																						
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. Estimated Number of Creditors <table style="width: 100%; text-align: center;"> <tr> <td>1-49</td> <td>50-99</td> <td>100-199</td> <td>200-999</td> <td>1,000-5,000</td> <td>5,001-10,000</td> <td>10,001-25,000</td> <td>25,001-50,000</td> <td>50,001-100,000</td> <td>Over 100,000</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> Estimated Assets <input type="checkbox"/> \$0 to \$10,000 <input checked="" type="checkbox"/> \$10,000 to \$100,000 <input type="checkbox"/> \$100,000 to \$1 million <input type="checkbox"/> \$1 million to \$100 million <input type="checkbox"/> More than \$100 million Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,000 to \$100,000 <input checked="" type="checkbox"/> \$100,000 to \$1 million <input type="checkbox"/> \$1 million to \$100 million <input type="checkbox"/> More than \$100 million				1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	THIS SPACE IS FOR COURT USE ONLY
1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000															
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>															

Official Form 1 (10/06)

Form B1, Page 2

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed: OAKLAND	Case Number: 00-405328	Date Filed: 1-10-2000	
Location Where Filed: OAKLAND	Case Number: 00-48082	Date Filed: 10-29-99	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b). X _____ Signature of Attorney for Debtor(s) (Date)	
Exhibit C			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.			
<input checked="" type="checkbox"/> No.			
Exhibit D			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition.			
If this is a joint petition:			
<input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box.)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Statement by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes.)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____ (Name of landlord that obtained judgment)			
_____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			

F1

OAKLAND
99-44957

6-14-99

OAKLAND

99-43549

4-28-99

OAKLAND
05-49268

10-16-05

OAKLAND
00-41544

3-14-2000

OAKLAND
03-47305

12-18-03

SAN JOSE
05-53113

5-20-05

Official Form 1 (10/06)		Form B1, Page 3	
Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s):	
Signatures			
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b). X _____ Signature of Debtor X _____ Signature of Joint Debtor _____ Telephone Number (if not represented by attorney) 061219 _____ Date		Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) <input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached. <input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. X _____ (Signature of Foreign Representative) _____ (Printed Name of Foreign Representative) _____ Date	
Signature of Attorney X _____ Signature of Attorney for Debtor(s) _____ Printed Name of Attorney for Debtor(s) _____ Firm Name _____ Address _____ _____ _____ Telephone Number _____ Date		Signature of Non-Attorney Bankruptcy Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached. _____ Printed Name and title, if any, of Bankruptcy Petition Preparer Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.) _____ Address _____ _____ _____ X _____ _____ Date Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above. Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual. If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.	
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition. X _____ Signature of Authorized Individual _____ Printed Name of Authorized Individual _____ Title of Authorized Individual _____ Date			